IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

MFA.No. 1209 of 1994(E)

OPMV.2618/1992 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOZHIKODE , DT. 18.1.1994.
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APPELLANT: PETITIONERSS IN OP(MV)
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1. **JOSEPH, S/O.JOSEPH, AGED 30 YEARS, KANICHERY HOUSE, PO. KAKKAYAM, QUILANDY TALUK, KOZHIKODE DISTRICT.**

2. **TESSY JOSEPH, D/O. JOSEPH, AGED 8 YEARS, (MINOR), REP.BY FATHER JOSEPH, KANICHERI HOUSE, P.O.KAKKAYAM,QUILANDY TALUK, KOZHIKODE DISTRICT.**

3. **DENNI JOSEPH, S/O.JOSEPH, AGED 4 YEARS, (MINOR), REP.BY GUARDIAN FATHER JOSEPH, KANICHERY HOUSE, P.O.KAKKAYAM, QUILANDY TALUK, KOZHIKODE DISTRICT.**

4. **N.V.SAMUEL, S/O.VARGHESE, NERIYATTIL HOUSE, KARIYATHUMPARA, P.O.KALLANODE, QUILANDY TALUK, KOZHIKODE DISTRICT.**

5. **THANKAMMA, WIFE OF SAMUEL, NERIYATTIL HOUSE, KARIYATHUMPARA, P.O.KALLANODE, QUILANDY TALUK, KOZHIKODE DISTRICT.**

BY ADV. SRI.V.V.SURENDRAN
SRI.P.K.DHANAPALAN
SRI.P.M.PADMANABHAN

M.F.A. NO.1209/1994

RESPONDENTS: RESPONDENTS IN OP (MV)
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1. **M.BALAN, NANGACHIPARAMBATH HOUSE P.O.CHELANNOOR, KOZHIKODE DISTRICT.**

2. **K.MOIDEEN KOYA, KUNNUMMAL HOUSE, BALUSSERY AMSOM, PUTHOOR DESOM, KOZHIKODE DISTRICT.**

3. **M/S.UNITED INDIA INSURANCE CO.LTD., MADRAS 14.**

BY ADV. SRI.GEORGE VARGHESE NARAYANPARAMBIL

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 29/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 1209 of 1994

Dated this the 29th day of May,2007

JUDGMENT

Koshy, J.

Appellants are the husband, two children and parents of deceased Suja, who had an instantaneous death at 4 p.m. on 29.7.1992 when she was knocked down and ran over by a bus bearing Reg. No. KL-11/A 2414, owned, driven and insured by respondents 1 to 3 respectively while she was walking along the margin of the Koorachundu-Kozhikode road at Thalayad town. They claimed Rs.2,50,000/- as compensation. The tribunal found that the deceased was also negligent by 25%. But, the driver of the vehicle insured by the third respondent Insurance Company was negligent and 75% negligence was attributed to him and a total compensation of Rupees One lakh was calculated and the appellants were awarded Rs.75,000/- after deducting Rs.25,000/- for contributory negligence of the deceased. Finding of contributory negligence and quantum of compensation are disputed in this appeal.

2. With regard to the negligence, appellants/ claimants examined PW2, an eye witness. She deposed that the deceased was knocked down by the bus, while she was walking towards south along the right side of the Kakkayam road at Thalayad and that the accident occurred because of the rash and negligent driving of the bus. Exhibit A1 is the copy of the First Information Statement given by an on-looker. The F.I. Statement is in terms of the deposition of PW2. The evidence of PW2 is corroborated by Exhibit A1. After considering the F.I. Statement and scene mahazar, police registered a case against the second respondent driver. The evidence of PW2, an eye witness, corroborated by Exhibit A1 FIR is undisputed. No evidence regarding contributory negligence was adduced by the respondents. The driver (R2) did not come to the box to deny negligence alleged against him. The Insurance Company also did not adduce any evidence or summon any evidence to contradict the evidence of PW2. But, from Exhibit A3 scene mahazar, the tribunal presumed that the accident occurred while she was crossing the road and she also might be responsible. Scene mahazar is prepared after the accident and the exact location of the accident cannot be fixed from the scene mahazar alone and the person who prepared

the scene mahazar was not examined. Exhibit A2 postmortem certificate shows that the bus ran over the body and this was instantaneous death due to head injury. A pedestrian was knocked down by the bus. The tribunal noted that since the first informant (not examined before the tribunal) in Exhibit A1 stated that he saw the dead body in front of the house, bus was not running in a rash speed. It was also found by the tribunal as follows:

> "But, evidence is lacking from the side of the 2nd respondent who was driving the bus to show that on seeing the pedestrian he had sounded the horn to alert the pedestrian who was walking in the rain. Because of the sound of the rain there is less possibility for hearing the sound of the horn. The second respondent should have taken a note of that circumstance and might to have sounded the horns. There is evidence lacking on the side of the respondents to show that the second respondent had taken necessary precautions while on wheels."

We are of the view that the deceased who was a pedestrian was knocked down by the bus and evidence of PW2, an independent eye witness, shows that the driver of the bus was negligent. It is corroborated by Exhibit A1 FIR. In the absence of any contrary evidence, contributory

negligence cannot be attributed against the deceased. Therefore, we vacate the finding of contributory negligence on the part of the deceased.

3. Now, the question is regarding the quantum of compensation. According to the claimants, the deceased was a Tailor earning Rs.350/- per week (Rs.1,400/- per month).

> "Ext.A4 is a certificate issued from the tailoring school certifying that the deceased had her training in tailoring from that institution. It would not show that the petitioner had in fact the avocation of tailoring and had been making any earnings. Ext.A5 is a request made by the 5th petitioner to the Manager, South Malabar Gramin Bank and a reply thereon. It was certified by the Manager of the South Malabar Gramin Bank that a loan of Rs.1,260/- was granted to the 5th petitioner, the mother of the deceased to purchase two sewing machines."

According to the Tribunal the above document will not prove the income of the deceased, but, probably, the deceased also should have some sort of avocation and would have been earning by tailoring. Tribunal found that it cannot be ignored that the first petitioner lost service of the wife and petitioners 2 and 3 lost the service of a mother. After

holding so, monthly loss of dependency was calculated at Rs.500/- only. We are of the opinion that loss of monthly dependency awarded by the Tribunal is very meagre and in the absence of any material to contradict the evidence of PW1, tribunal ought to have found that she had reasonable income from tailoring. In any event, service of a house wife cannot be ignored. At the time of death she left behind six year old daughter and three year old son. A three-member Bench of the Supreme Court held in Latha Wadhwa and others v. State of Bihar and others ((2001) 8 SCC 197) that services of the housewives cannot be ignored. In that case, it was held that even Rs.3,000/- can be fixed as monthly loss of dependency when a non-earning house wife died. In this case, incident occurred in 1992. Considering the circumstances, we are of the view that at least Rs.1,250/- per month can be fixed as monthly income (Rs.15,000/- yearly) and after deducting one-third, Rs.10,000/- can be fixed as yearly loss of dependency. She was aged 26 at the time of death. Her children were very young. A three-member Bench of the Supreme Court in Smt.Supe Dei and others v. M/s. National Insurance Company Ltd. and another (JT 2002 (Suppl.1) SC 451), held that the second schedule of the Motor Vehicles Act is framed for the

purpose of awarding compensation under section 163-A, but, it serves as a guideline for determination of compensation under section 166 of the Motor Vehicles Act. Taking guidelines from the second schedule, we fix 18 as the multiplier. If that be so, compensation payable will be Rs.10,000/- x 18 = Rs.1,80,000/-. Husband lost the wife at the young age. He was aged only 28 at that time. We fix loss of consortium at Rs.7,500/-. Tribunal has granted Rs.10,000/- each to the minor children for loss of love and affection, loss of mother's care and guidance and loss of estate. We see no ground to enhance the same. For expenses incurred for funeral and transportation tribunal fixed Rs.2,000/-. We are not awarding any further enhancement. Since death was instantaneous, we are not awarding any compensation for pain and suffering. Thus, total compensation payable will be Rs.2,09,500/-. Tribunal granted only Fs.75,000/- as compensation. Thus, balance compensation payable will be Rs.1,34,500/-. It should be deposited by the third respondent insurance company with 7% interest from the date of application till deposit. Out of the above amount, appellants Nos.4 and 5 (parents) are allowed to withdraw Rs.5,000/- each and Rs.20,500/- is allowed to be withdrawn by the first appellant (husband).

Balance amount including interest should be deposited in a nationalised bank in the name of son and daughter. Deposit made in favour of second appellant can be withdrawn at the time of her marriage by filing application before the tribunal. Deposit made in favour of the third appellant son can be withdrawn when he attains the age of 21. Cost awarded by the tribunal is not interfered with.

Appeal allowed partly. Parties to bear costs in this appeal.

J.B.Koshy
Judge

K.P.Balachandran
Judge

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